

ADR-based Negotiations

Strategies for Prevention or Early
Resolution of Protests

BLM's ADR Program: Who We Are

- Alternative Dispute Resolution, Conflict Prevention, and Collaborative Stakeholder Engagement Program
- WO-200
- ADR Advisors

BLM's ADR Program: What We Do

- Conflict Prevention / Traditional ADR
- Policy Development
- National ADR Monitoring and Evaluation
- Ombudsman
- Training and Support

BLM's ADR Program:

Why

- **Mandates:**
 - Administrative Dispute Resolution Act of 1996 (ADRA)
 - OMB & CEQ mandates to the agencies
 - Increase environmental conflict resolution
 - Annual report
 - Executive Branch Policies & Departmental Initiatives

BLM's ADR Program: Why

- Other reasons:
 - Cost
 - Time
 - Good Will

The Continuum of Alternative Dispute Resolution, Conflict Prevention, and Collaborative Stakeholder Engagement (ADR)

For Natural Resources In the Bureau of Land Management



Steps in a Typical ADR Process

1. Preparing and documenting an ADR Suitability Determination, including a go/no-go decision. Conducting a Situation/Stakeholder Assessment as part of the Determination.
2. Where appropriate, developing an ADR Plan: identifying processes, strategies, determining need for a third-party neutral
3. Convening parties; establishing ground rules
4. Identifying issues: storming and norming
5. Establishing common ground: goals, values
6. Identifying interests vs. positions
7. Building consensus (buy-in)
6. Developing and finalizing an agreement

ADR Processes

- Collaborative Engagement - public outreach/public involvement: 1) Meetings: one-on-one, groups/stakeholders, town halls, workshops, community visioning sessions, community-based collaboratives; 2) Other forms of communication: internet, print, telephone, e-mail/mail, polling
- Ombudsman; Conflict Coaching - Communities, stakeholders, employees, appellants, protesters
- Conflict Management/Resolution
 - Direct negotiation; Assisted negotiation
 - Mediation; Conciliation; Facilitation; Joint fact finding; Negotiated rulemaking
 - Settlement Judge (Office of Hearings and Appeals Hearings Division); Administrative (OHA Interior Board of Land Appeals); Court orders
 - Congressional mandate (legislation)

Common ADR Strategies

- Framing; re-framing
- (Identifying) BATNA's and WATNA's
- Caucusing
- Mutual gains bargaining
- Bridging; Blocking; Logrolling
- Decision analysis; Minority reports

For additional information, please contact Paul Politzer - Bureau Dispute Resolution Manager, National Ombudsman, and Head of the BLM's National Alternative Dispute Resolution, Conflict Prevention, and Collaborative Stakeholder & Employee Engagement Program, Office of the Assistant Director, Planning and Renewable Resources (www.blm.gov/adr or 202-254-3325)

ADR and Conflict Prevention Processes

- Direct Negotiation
- Assisted Negotiation
- Joint fact-finding
- Facilitation
- Mediation
- Community Collaboratives

ADR and Conflict Prevention Processes

- Collaborative Stakeholder Engagement
 - Cooperating Agencies, States, tribes, local governments
 - Public meetings
 - Stakeholder working groups (RACs and otherwise)
 - Other Public Involvement
- Builds Relationships
- Facilitates Communication
- Allows stakeholders to feel heard, gives stake in successful resolution/implementation

ADR and Conflict Prevention Processes

- Not for every situation
 - Some groups not interested in negotiation
 - Some disagreements not ripe
 - Sometimes need precedent or formal
 - Good faith

ADR in the Planning Process

- Planning handbook
 - § I.D. & App. A
 - “Collaborative Planning”
- Early for prevention:
 - Scoping
 - Alternatives
- Later for resolution
 - Comments
 - Protests?

ADR in the Planning Process

- OMB/CEQ Report
- Compendium
- Successes (and otherwise)
 - What worked?
 - What didn't?

IBLA ADR Process

- Interior Board of Land Appeals: every case goes through screens for ADR *pre-adjudication*
- Refer back to Bureau if ADR seems suitable (forthcoming Bureau guidance)
- Agencies encouraged to pursue even if not ordered
- IBLA can dismiss if agreement reached, otherwise continue through regular process

IBLA ADR Process

- Screens
 - Not every case suitable, look for right circumstances
 - Look at deadlines, subject matter, history between parties, precedential value, Bureau discretion/authority, overlapping interests, etc.
 - Even if IBLA screens pass case back, BLM can determine unsuitable

IBLA ADR Process

- Voluntary
 - When ordered for ADR, required to consider in good faith, justify
 - Not required to come to agreement
 - If turns out unsuitable for ADR, or either party feels not going to work, goes right back to traditional IBLA process

IBLA ADR Process

- Usually Direct Negotiation
- Other ADR depending on case
 - e.g., overlapping interests, but difficult communications: third party neutral might help

Protest Prevention

- Upstream/Downstream ADR:
 - The earlier, the better
 - Better late than never
- Usually as simple as direct negotiation
- Time and cost savings
- Relationships/community trust